



New South Wales

Aboriginal Land Rights Amendment Act 1995 No 39

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Aboriginal Land Rights Act 1983 No 42	2
4 Amendment of Land and Environment Court Act 1979 No 204	2

Schedules

1 Amendment of Aboriginal Land Rights Act 1983	3
2 Amendment of Land and Environment Court Act 1979	7



New South Wales

Aboriginal Land Rights Amendment Act 1995 No 39

Act No 39, 1995

An Act to amend the *Aboriginal Land Rights Act 1983* to make further provision with respect to the election of councillors of the New South Wales Aboriginal Land Council; and to amend the Land and Environment Court Act 1979 to confer jurisdiction on the Court to settle disputed returns in such elections. [Assented to 26 October 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Aboriginal Land Rights Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Aboriginal Land Rights Act 1983 No 42

The *Aboriginal Land Rights Act 1983* is amended as set out in Schedule 1.

4 Amendment of Land and Environment Court Act 1979 No 204

The *Land and Environment Court Act 1979* is amended as set out in Schedule 2.

Schedule 1 Amendment of Aboriginal Land Rights Act 1983

(Section 3)

[1] Section 26

Omit the section. Insert instead:

26 Who may vote

- (1) A person is entitled to vote at an election for a councillor to represent a Regional Aboriginal Land Council area on the New South Wales Aboriginal Land Council if the person is a member of a Local Aboriginal Land Council within the area.
- (2) However, a person is not entitled to vote more than once in an election of all councillors of the New South Wales Aboriginal Land Council if that person is a member of more than one Local Aboriginal Land Council:
 - (a) within the same Regional Aboriginal Land Council area, or
 - (b) in different Regional Aboriginal Land Council areas.
- (3) A person who is a member of more than one Local Aboriginal Land Council:
 - (a) within the same Regional Aboriginal Land Council area, or
 - (b) in different Regional Aboriginal Land Council areas,

is only entitled to cast his or her vote in respect of the Local Aboriginal Land Council area in which the person ordinarily resides.

[2] Part 4, Divisions 2A and 2B

Insert after section 27A:

Division 2A Declaration of election

27AA Declaration of election

If the returning officer for an election of councillors of the New South Wales Aboriginal Land Council is advised by a regional electoral officer that the result of the counting of votes is that a candidate has been elected, the returning officer must immediately publicly declare the candidate elected as a councillor.

27AB Office holders pending determination of disputed return

- (1) Section 27AA applies even if the election of the candidate (or of any other candidate in the election) is the subject of an application under section 27AC disputing the validity of the election of the candidate.
- (2) A candidate who is publicly declared elected as a councillor by the returning officer holds that office until the determination of any proceedings disputing the validity of the election of the candidate.
- (3) A candidate referred to in subsection (2) is taken to hold office, and is competent to carry out all the functions and duties of a duly elected councillor, from the date on which the returning officer declares the candidate elected, until:
 - (a) the Court hearing an application under section 27AC disputing the validity of the election of the candidate determines otherwise, or
 - (b) the term of office of the councillor expires or becomes vacant,whichever is the earlier.
- (4) The New South Wales Aboriginal Land Council in which a candidate referred to in subsection (2) holds office is not invalidly constituted for that reason.

Division 2 B Disputed returns

27AC Method of disputing elections and returns

- (1) The validity of an election for a councillor to represent a Regional Aboriginal Land Council area, or of any return or statement showing the voting in any such election, may be disputed by an application to the Court, and not otherwise.
- (2) Any person may make an application to the Court under this section within 28 days after the returning officer has publicly declared the result of the election that is the subject of the application.

27AD Powers of Court

In determining an application under section 27AC, the Court has the same powers as are conferred by section 161 of the *Parliamentary Electorates and Elections Act 1912* on the Court of Disputed Returns.

27AE Right of returning officer to be represented

The returning officer is entitled to be represented at the hearing of an application under section 27AC.

27AF Procedure

- (1) The procedure of the Court on an application under section 27AC is to be determined by rules of Court, or in the absence of rules of Court, by the Court or a judge of the Court.
- (2) The Court is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.
- (3) Despite section 27AD, the Court may make an order for costs in respect of an application under section 27AC only if the Court is satisfied that there are exceptional circumstances that warrant the making of such an order.

27AG Immaterial errors not to invalidate election

- (1) An election of councillors of the New South Wales Aboriginal Land Council, or any return or statement showing the voting in an election, is not invalid because of
 - (a) any delay in taking the votes of the electors or in making any statement or return, or
 - (b) the absence of any officer, or
 - (c) the error or omission of any officer,that could not have affected the result of the election.
- (2) If a person was prevented from voting in an election because of the absence of any officer, or the error or omission of any officer, the Court must not admit any evidence of the way the person intended to vote in order to determine whether or not the absence, error or omission could have affected the result of the election.

27AH Decisions to be final

- (1) A decision of the Court in respect of an application under section 27AC is final and conclusive and without appeal, and is not to be questioned in any way.
- (2) Section 58 of the *Land and Environment Court Act 1979* does not apply to any such decision of the Court.

[3] Section 68 Regulations

Insert after section 68 (2) (f):

- (g) disputed returns in elections of councillors of the New South Wales Aboriginal Land Council.

Schedule 2 Amendment of Land and Environment Court Act 1979

(Section 4)

[1] Section 20 Class 4—Environmental planning and protection and development contract civil enforcement

Insert after section 20 (1) (dc):

(dd) proceedings under Division 2B of Part 4 of the
Aboriginal Land Rights Act 1983,

[2] Section 20 (2A)

Insert after section 20 (2):

(2A) The Court has jurisdiction to hear and dispose of
proceedings referred to in subsection (1) (dd).

[3] Section 20 (3) (a)

Insert “(other than Division 2B of Part 4)” after “*Aboriginal Land
Rights Act 1983*”.

[Minister’s second reading speech made in—
Legislative Assembly on 20 September 1995
Legislative Council on 19 October 1995]